

REMARKS

Applicant respectfully requests reconsideration. Claims 1-32 were previously pending in this application. By this amendment, Applicant is canceling claims 2, 3, 9, 12, 15, 16, 22, 25, 26 and 31 without prejudice or disclaimer. Applicant reserves the right to reintroduce these claims in this application or pursue them in one or more continuation or divisional applications. Claims 10, 13, 23, and 32 have been withdrawn. Claims 1, 4, 7, 11, 14, 17 and 24 have been amended. Support for these amendments is found on page 1, paragraph 5, page 2 paragraphs 13 and 15, and page 4, paragraphs 33 and 34. As a result, claims 1, 4-8, 11, 14, 17-21, 24 and 27-30 are pending for examination with claims 1, 14, and 24 being independent claims. No new matter has been added.

Double Patenting Rejection

The Examiner rejected claims 1-9, 11, 12, 14-22 and 24-31 as provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6-7 of copending Application No. 11/090,479, in view of Ahlquist et al. and Hromadnikova et al.

This rejection is a provisional rejection based on an application with claims not yet allowable. Applicant therefore respectfully requests to defer substantive rebuttal of this rejection until the claims are considered in condition for allowance.

The Examiner also rejected claims 1-9, 11, 12, 14-22 and 24-31 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over a) claims 1-4 of U.S. Patent No. 6,919,174, in view of Ahlquist et al. and Hromadnikova et al., b) claims 1-4 of U.S. Patent No. 6,964,846, in view of Ahlquist et al. and Hromadnikova et al., c) claims 1-33 of U.S. Patent No. 6,143,529, in view of Ahlquist et al. and Hromadnikova et al., and d) claims 31-48 of U.S. Patent No. 6,268,136 in view of Ahlquist et al. and Hromadnikova et al.

Applicant respectfully disagrees with these rejections, and further requests their withdrawal in view of the current claim amendments. The cited claims, taken alone or in view of Ahlquist et al. and Hromadnikova et al., fail to teach or suggest measuring a quantitative amount of genome equivalents of patient genomic DNA in a stool sample and comparing it to a predetermined

threshold amount of genome equivalents. Applicant has cancelled claims 2-3, 9, 12, 15-16, 22, 25-26 and 31 without prejudice or disclaimer, rendering this rejection moot over these claims.

Accordingly, withdrawal of the rejection of claims 1-9, 11, 12, 14-22 and 24-31 is respectfully requested.

Rejections under 35 U.S.C. § 112

The Examiner rejected claims 1-9, 11, 12, 14-22 and 24-31 under 35 U.S.C. § 112, second paragraph as being indefinite.

Applicant has cancelled claims 2-3, 9, 12, 15-16, 22, 25-26 and 31 without prejudice or disclaimer, rendering this rejection moot over these claims. The remaining claims are rejected as indefinite for the recitation of “a predetermined threshold amount”. Applicant has amended claims 1, 14 and 24 to recite a “threshold amount of genome equivalents” in place of “threshold amount”. Support for this amendment is found on page 4, paragraphs 33 and 34. The specification teaches how to determine a threshold amount based on genome equivalents (see for example, page 4, paragraph 34).

Accordingly, withdrawal of the rejection of claims 1-9, 11, 12, 14-22 and 24-31 under 35 U.S.C. § 112, second paragraph, is respectfully requested.

The Examiner rejected claims 1-9, 11, 14-22 and 24-31 under 35 U.S.C. § 112, first paragraph as failing to comply with the enablement requirement.

Applicant has cancelled claims 2-3, 9, 15-16, 22, 25-26 and 31 without prejudice or disclaimer, rendering this rejection moot over these claims. Without acquiescing or agreeing with the Examiner’s rejection, Applicant has amended the claims to recite “colorectal cancer” and “stool sample” which are enabled as indicated by the Examiner. Support for these amendments is found, for example, on page 1, paragraph 5, page 2 paragraph 13 and paragraph 15.

Accordingly, withdrawal of the rejection of claims 1-9, 11, 14-22 and 24-31 under 35 U.S.C. § 112, first paragraph, is respectfully requested.

Rejections Under 35 U.S.C. § 102

The Examiner rejected claims 1, 2, 4, 6, 7, 9, 11, 12, 14, 15, 17, 19, 20, 22, 24, 25, 28, 29, and 31 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,268,136 (Shuber et al.).

Applicant respectfully disagrees. Shuber et al. does not teach measuring a quantitative amount of genome equivalents of patient genomic DNA in a stool sample and comparing it to a predetermined threshold amount of genome equivalents. Applicant has cancelled claims 2, 9, 12, 15, 22, 25 and 31 without prejudice or disclaimer, rendering this rejection moot over these claims.

Accordingly, withdrawal of this rejection is respectfully requested.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 1-9, 11, 12, 14-22 and 24-31 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,268,136 (Shuber et al.) in view of Ahlquist et al. and Hromadnikova et al. and over Ahlquist et al. in view of Hromadnikova et al.

Applicant respectfully disagrees. Shuber et al. in view of Ahlquist et al. and Hromadnikova et al., and Ahlquist et al. in view of Hromadnikova et al., fail to teach or suggest measuring a quantitative amount of genome equivalents of patient genomic DNA in a stool sample and comparing it to a predetermined threshold amount of genome equivalents. Applicant has cancelled claims 2-3, 9, 12, 15-16, 22, 25-26 and 31 without prejudice or disclaimer, rendering this rejection moot over these claims.

Accordingly, withdrawal of these rejections is respectfully requested.

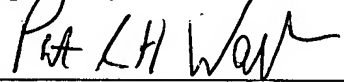
CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

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Respectfully submitted,

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